

ASSIGNMENT AND INTERCREDITOR AGREEMENT

THIS ASSIGNMENT AND INTERCREDITOR AGREEMENT (“**Assignment**”) dated as of May 1, 2004 is among **COUNTY OF SAN BERNARDINO** (“**Issuer**”), a political subdivision of the State of California, **BNY WESTERN TRUST COMPANY** (“**Trustee**”), not in its individual or corporate capacity, but solely as Trustee under the Indenture, a banking corporation organized under the laws of the State of California, and **FANNIE MAE** (“**Fannie Mae**”), a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. § 1716, et seq., as amended and is acknowledged, accepted and agreed to by **WLP PARKVIEW PLACE APARTMENTS, LLC** (“**Borrower**”), a Delaware limited liability company.

RECITALS

A. Borrower has requested Issuer to issue its County of San Bernardino, California Variable Rate Demand Multifamily Housing Mortgage Revenue Refunding Bonds, 2004 Series A (Parkview Place Apartments) (“**Bonds**”) and lend the proceeds of the Bonds to Borrower in the form of a mortgage loan (“**Loan**”).

B. Issuer is issuing and selling the Bonds under the Indenture and depositing the proceeds of the Bonds with Trustee to be used to fund the Loan.

C. The Loan is (a) evidenced by the Note and (b) secured by the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date of this Assignment, executed by the Borrower with respect to the Mortgaged Property (as defined below) for the benefit of Issuer and Fannie Mae as their interests may appear and recorded with the County Recorder’s Office for _____ County as Instrument No. _____ (“**Security Instrument**”). The purpose of the Loan is to refinance the development by the Borrower of a certain multifamily housing apartment building within San Bernardino County, California as more particularly described on Exhibit A attached hereto and incorporated herein by reference (“**Mortgaged Property**”). This Assignment acts as an assignment of the Security Instrument.

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 **Incorporation of Recitals**. In addition to the recitals set out above, the Recitals to the Indenture are incorporated into and made a part of this Agreement.

SECTION 1.2 **Defined Terms**. All capitalized terms used in this Assignment have the meanings given to those terms in the Indenture or elsewhere in this Assignment unless the context or use clearly indicates a different meaning.

SECTION 1.3 **Rules of Construction**. The rules of construction set forth in Section 1.2 of the Indenture shall apply to this Assignment in their entirety, except that in applying such rules, the term “Assignment” shall be substituted for the term “Indenture”.

SECTION 1.4 **Interpretation.** Each of the parties acknowledges that it and its counsel participated in the drafting and revision of this Assignment. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Assignment.

SECTION 1.5 **Effective Date.** This Assignment shall be effective on the Closing Date, immediately upon the effectiveness of the Indenture.

ARTICLE II

TRANSFER OF ASSIGNED RIGHTS

SECTION 2.1 **Assignment of Assigned Rights to Fannie Mae and the Trustee.** The Issuer irrevocably and absolutely assigns, transfers, conveys and delivers to Fannie Mae and the Trustee (individually, each an “**Assignee**” and collectively, the “**Assignees**”), but without recourse to the Issuer, all of the Issuer’s right, title and interest in and to (i) the Note, the Security Instrument, each of the other Loan Documents and the Financing Agreement (collectively, “**Assigned Documents**”), (ii) all the real and personal property described in the Assigned Documents and (iii) all proceeds, products, substitutions, additions and replacements of any collateral now or hereafter mortgaged, assigned or pledged under any of the Assigned Documents; in all cases whether now existing or arising in the future; provided, however, that the Reserved Rights of the Issuer are excepted from such assignment and transfer (collectively, “**Assigned Rights**”). Each Assignee acknowledges receipt of, and accepts, and shall hold, the Assigned Rights, as its interest may appear.

SECTION 2.2 **Acknowledgement of Exclusion from Assignment.** The Borrower, the Issuer, Fannie Mae and the Trustee specifically agree that the Regulatory Agreement is not an Assigned Document; provided, however, that Fannie Mae, as a third party beneficiary, shall have the right to enforce the Regulatory Agreement in accordance with the provisions of the Regulatory Agreement.

SECTION 2.3 **Limitations on Issuer.** From and after the effective date of this Assignment, the Issuer shall not have, except with respect to the Reserved Rights, any right, power or authority to exercise any of the Assigned Rights or take any other action with respect to the Assigned Documents or the Assigned Rights, including waiving or releasing the Borrower from any default under any of the Assigned Documents, consenting to any amendment, supplement to, or restatement of any Loan Document and accelerating or otherwise enforcing payment or seeking other remedies with respect to the Loan.

SECTION 2.4 **Power of Attorney.** Subject to the Reserved Rights of the Issuer, the Issuer agrees that Fannie Mae and the Trustee, each acting alone, in its own name or in the name of the Issuer, may enforce all of the Assigned Rights and all obligations of the Borrower under the Assigned Documents, without regard to whether the Issuer is in default under the Assigned Documents or under this Assignment. In order to implement the foregoing, the Issuer appoints each of Fannie Mae and the Trustee, their respective successors and assigns, as the Issuer’s true and lawful attorney-in-fact with power of substitution to do any or all of the foregoing in the name, place and stead of the Issuer. This power of attorney, being coupled with an interest, is irrevocable as long as this Assignment remains in effect.

SECTION 2.5 **Disclaimer of Assumption of Obligations**. Neither Fannie Mae nor the Trustee shall be obligated by reason of this Assignment or otherwise to perform or be responsible for the performance of any of the obligations of the Issuer under the Assigned Documents.

SECTION 2.6 **Confirmation of Assignment and Transfer**. In order to confirm and evidence the assignment set out in Section 2.1, the Issuer has delivered to Fannie Mae and the Trustee and Fannie Mae and the Trustee acknowledge receipt of, a signed counterpart of each of the Assigned Documents (other than the Note, which is a single original delivered to the custody of Fannie Mae as provided in Section 4.1) and has executed and delivered to Fannie Mae and the Trustee Uniform Commercial Code financing statements covering the Issuer's interest in the Assigned Rights in form sufficient for filing with the California Secretary of State's Office and the Recorder's Office for San Bernardino County, naming Fannie Mae and the Trustee as secured parties.

SECTION 2.7 **Further Assurances**. The Issuer agrees to cooperate with the Borrower, Fannie Mae and the Trustee in their defenses of Fannie Mae's and the Trustee's interests in the Assigned Rights against the claims and demands of all Persons. The Issuer will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such additional and supplemental agreements, financing statements, continuation statements and other instruments and documents, do such further acts, and make such further transfers as the Trustee or Fannie Mae may reasonably request to effectuate the purpose and intent of this Assignment.

ARTICLE III **LOAN SERVICING**

SECTION 3.1 **Servicing**. So long as the Assigned Rights have not transferred to the Trustee pursuant to Section 5.1, Fannie Mae shall have the sole and exclusive right, without the consent of the Issuer, the Trustee or the Borrower, to (i) arrange for the servicing of the Assigned Rights and the Issuer's Fee, but excluding all other Reserved Rights (ii) appoint and reappoint the Loan Servicer and (iii) terminate the Loan Servicer (with or without cause), all on such terms and conditions as Fannie Mae may determine from time to time. Loan servicing shall include, but not be limited to, the power and authority to (a) take any action, make any decision, exercise any power or authority to act with respect to the Assigned Rights, (b) establish and maintain custodial and other accounts for the deposit of funds payable by the Borrower and (c) collect, apply and disburse payments of principal of, interest on and premium on the Loan and all other sums payable from time to time by the Borrower under any of the Loan Documents or the Financing Agreement, all in accordance with the applicable documents. None of the Issuer, the Trustee or the Borrower shall have any right under, or be a third party beneficiary of, the Servicing Agreement. Neither Fannie Mae, the Issuer nor the Trustee shall have any obligation to pay a servicing fee to the Loan Servicer.

SECTION 3.2 **Monitoring**. The Borrower shall furnish to the Loan Servicer copies of all reports regarding the Mortgaged Property required to be filed by the Borrower pursuant to the Financing Agreement or the Regulatory Agreement. Neither the Trustee nor the Loan Servicer shall have any duty or obligation to analyze or review any such reports for determining whether or not the Borrower or the Mortgaged Property is in compliance with the requirements of the

Code for maintaining the excludability from gross income, for federal income tax purposes, of the interest payable on the Bonds.

ARTICLE IV

CONTROL OF ASSIGNED RIGHTS

SECTION 4.1 **Possession of Note and Security Instrument**. Subject to the provisions of Section 5.1, Fannie Mae shall hold the original Note and the recorded Security Instrument. The originals (or, where recorded, executed copies) of all other Loan Documents, shall also be delivered to and held by Fannie Mae. Fannie Mae acknowledges receipt of the original executed Note, endorsed to the order of Fannie Mae and the Trustee, as their interests may appear.

SECTION 4.2 **Exclusive Exercise of Assigned Rights by Fannie Mae**. Except only as provided in Section 5.1, Fannie Mae shall have and may exercise all of the Assigned Rights to the exclusion of the Trustee and in the same manner and with the same right, power and authority to act as Fannie Mae would have if Fannie Mae were the sole owner of the Loan and were the sole holder of the Note and the Security Instrument. In exercising the Assigned Rights, Fannie Mae shall not be an agent of the Issuer or the Trustee. Neither the Issuer nor the Trustee shall be liable for any action taken or not taken by Fannie Mae in the exercise of the Assigned Rights or the Loan Servicer in the servicing of the Assigned Rights.

SECTION 4.3 **Disposition of Loan**. Unless the Assigned Rights are transferred to the Trustee pursuant to Section 5.1, the Trustee shall not, without the prior written consent of Fannie Mae, dispose of the Loan, transfer the Note or any other Loan Document or any interest in the Note or any Loan Document, other than to Fannie Mae as provided in Sections 4.4 and 4.5, a successor Trustee pursuant to the Indenture or to the Issuer pursuant to Section 10.11 of this Assignment.

SECTION 4.4 **Assignment of Loan Without Payment or Redemption of Bonds**. Fannie Mae shall have the right, with respect to the Loan, without making an Advance under the Credit Enhancement Instrument, but only upon filing with the Trustee a certification reaffirming Fannie Mae's obligations under the Credit Enhancement Instrument, to instruct the Trustee in writing to assign the Note, the Security Instrument and the other Loan Documents to Fannie Mae, in which event the Trustee shall (i) endorse the Note to Fannie Mae and assign (in recordable form) the Security Instrument, (ii) assign (in recordable form) all other Loan Documents to Fannie Mae and (iii) execute all such documents as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii). The Trustee's assignments to Fannie Mae pursuant to this Section 4.4 shall be without recourse or warranty except that the Trustee shall represent and warrant in connection therewith (A) that the Trustee has not previously endorsed or assigned any such documents or instruments and (B) that the Trustee has authority to endorse and assign such documents and instruments and such endorsements and assignment have been duly authorized. Fannie Mae shall hold the Note and the Security Instrument for the benefit of the Bondholders. If, following such assignments, the Assigned Rights are transferred to the Trustee pursuant to Section 5.1, all rights and interests assigned by the Trustee to Fannie Mae pursuant to this Section shall automatically without any further action on the part of the Trustee or Fannie Mae revert to the Trustee. Notwithstanding the foregoing, Fannie Mae agrees to take such action and to execute and deliver and to facilitate

the recordation of such documents provided to Fannie Mae as may be reasonably necessary to evidence the reversion of all rights and interests originally assigned by the Trustee to Fannie Mae pursuant to this Section. No assignment pursuant to this Section shall affect Fannie Mae's obligations under the Credit Enhancement Instrument.

SECTION 4.5 **Assignment of Assigned Rights Upon Payment or Redemption of Bonds in Whole.** In the event Fannie Mae makes an Advance under the Credit Enhancement Instrument with respect to the payment or redemption of the Bonds Outstanding in whole, unless otherwise determined by Fannie Mae:

(a) all of the Trustee's right, title and interest in and to the Assigned Rights shall transfer to Fannie Mae automatically, without any further action on the part of the Trustee or Fannie Mae; and

(b) the Trustee shall (i) endorse the Note to Fannie Mae and assign (in recordable form) and deliver the Security Instrument to Fannie Mae, (ii) assign (in recordable form) all other Loan Documents and the Financing Agreement to Fannie Mae and (iii) execute and deliver all such other documents as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii).

The Trustee's assignments to Fannie Mae pursuant to this Section shall be without recourse or warranty except that the Trustee shall represent and warrant in connection therewith (A) that the Trustee has not previously endorsed or assigned any such documents or instruments and (B) that the Trustee has authority to endorse and assign such documents and instruments.

SECTION 4.6 **Consequences of Foreclosure.** In the event that, following a default under the Loan, the (a) Mortgaged Property is acquired by either or both of the Assignees, or their nominees, as a result of a foreclosure or the acceptance of a deed in lieu of foreclosure or comparable conversion of the Loan or other enforcement provisions of the Security Instrument, (b) the Bonds are not redeemed with funds provided under the Credit Enhancement Instrument and (c) Fannie Mae has any obligation under the Credit Enhancement Instrument and no Wrongful Dishonor exists, the Mortgaged Property shall be conveyed to Fannie Mae or its nominee, and all decisions thereafter with respect to the Mortgaged Property (including, without limitation, all decisions with respect to the management, operation, maintenance and sale of the Mortgaged Property — and the price and terms of such sale — the payment or contesting of real estate taxes, rebuilding or restoration after damage, destruction or taking, alterations, improvements, insurance coverage, litigation and conversion to a cooperative or condominium), shall be made solely by Fannie Mae.

SECTION 4.7 **Amendments to Loan Documents.** Unless the Assigned Rights are transferred to the Trustee pursuant to Section 5.1, the provisions of this Section shall apply to any amendment, supplement to or restatement of the Loan Documents.

(a) **Right to Amend, Supplement or Restate Loan Documents.** Fannie Mae shall have the right to amend, supplement or restate the Loan Documents with the Borrower and to exchange any of the Loan Documents for new Loan Documents relating to the Mortgaged

Property (collectively, “**Amended Loan Documents**”). If the execution of any Amended Loan Documents would:

(1) result in an amendment of the Credit Facility, Fannie Mae may not proceed with such execution unless Fannie Mae provides to the Trustee an Opinion of Counsel to Fannie Mae, who may be an employee of Fannie Mae, to the effect that the modified Credit Facility is a valid and binding obligation of Fannie Mae, subject to any applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and general equitable principles and other customary exceptions.

(2) change the payment terms of the Loan, Fannie Mae must provide the Trustee a written confirmation from the Rating Agency that the rating to be in effect with respect to the Bonds from and after the execution of such Amended Loan Documents will not be lower than the rating then in effect for the Bonds.

(3) change the outstanding principal amount, the interest rate, the maturity date, the due date for the payment of interest, the terms of mandatory prepayment or governing law or jurisdiction provisions of the Note, Fannie Mae must obtain the Trustee’s prior written consent to such change.

(b) **Trustee’s Consent.** Unless the Assigned Rights are transferred to the Trustee pursuant to Section 5.1:

(1) unless directed to do so in writing by Fannie Mae, the Trustee shall not consent to any proposed amendment, supplement to or restatement of, any of the Loan Documents or waive any default by the Borrower under any of the Loan Documents; and

(2) if directed to do so in writing by Fannie Mae, the Trustee shall amend, supplement or restate the Loan Documents, or waive any default by the Borrower under any of the Loan Documents;

provided, however, that no such amendment, supplement or restatement shall (i) change, without the Trustee’s prior written consent, the outstanding principal amount, the interest rate, the maturity date, the due date for the payment of interest, the terms of mandatory prepayment or governing law or jurisdiction provisions of the Note; or (ii) change, without the Issuer’s prior written consent, the timing or amount of the Issuer’s Fee.

SECTION 4.8 **New Borrower**. In the event Fannie Mae forecloses the Security Instrument, or accepts a deed in lieu of foreclosure or comparable conversion of the Mortgaged Property, Fannie Mae shall have the right to enter into, or cause to be executed, Amended Loan Documents or exchange the Loan Documents for Amended Loan Documents by a person other than the Borrower (“**New Borrower**”). Except in the event of a transfer of the Mortgaged Property to Fannie Mae, Fannie Mae shall not execute any Amended Loan Documents having the effect of substituting a New Borrower as the Borrower, unless Fannie Mae first provides each of the following to the Trustee:

(a) written evidence that the New Borrower has executed and recorded, as applicable, documents, acceptable to the Issuer and Fannie Mae, substantially in the forms of the Financing Agreement and the Regulatory Agreement (or executed and recorded an assumption, acceptable to the Issuer and Fannie Mae, of all of the applicable Borrower's obligations under the Financing Agreement and the Regulatory Agreement) and that the Credit Facility Documents and the Credit Facility, if required, have been modified to be applicable to the new mortgage loan;

(b) from the Rating Agency written confirmation that the rating to be in effect with respect to the Bonds from and after delivery to the Trustee of the new mortgage note and mortgage and the modified Credit Facility Documents and modified Credit Facility will not be lower than the rating then in effect for the Bonds;

(c) an opinion of Bond Counsel to the effect that such exchange and modification, in and of itself, will not affect the excludability of the interest payable on the Bonds from gross income for federal income tax purposes; and

(d) from the Issuer, the consent (if any) required by the Regulatory Agreement.

SECTION 4.9 **Fannie Mae Assignment.** Fannie Mae shall have the right, in its sole discretion, to assign, sell or transfer its right, title and interest in, to and under the Assigned Documents, the Assigned Rights and this Assignment to any Person.

ARTICLE V

TRANSFER OF ASSIGNED RIGHTS TO TRUSTEE

SECTION 5.1 **Transfer of Assigned Rights to Trustee.** If either (i) Fannie Mae has no further obligation under the Credit Enhancement Instrument and all obligations of the Borrower to Fannie Mae under the Credit Facility Documents and the other Borrower Documents have been satisfied in full; or (ii) a Wrongful Dishonor occurs and continues for more than five Business Days after the Issuer or the Trustee gives written notice of such Wrongful Dishonor specifying such failure and requesting that it be remedied, the Assigned Rights shall transfer automatically to the Trustee, without any further action on the part of the Trustee or Fannie Mae. Fannie Mae shall promptly transfer possession of the original Note and the recorded Security Instrument and the other Assigned Documents to the Trustee. Fannie Mae shall also take such action and execute and deliver and facilitate the filing and recordation of such documents provided to Fannie Mae as may be reasonably necessary to evidence the transfer of the Assigned Rights to the Trustee and the assignment of the Assigned Documents to the Trustee. Fannie Mae's assignments to the Trustee pursuant to this Section shall be without recourse or warranty except that Fannie Mae shall represent and warrant in connection therewith (i) that Fannie Mae has not previously endorsed or assigned any such documents or instruments and (ii) that Fannie Mae has authority to endorse and assign such documents and instruments.

SECTION 5.2 **Exercise of Assigned Rights after Transfer to Trustee.** If the Assigned Rights transfer to the Trustee pursuant to Section 5.1:

(a) the Trustee (alone or, at its election, with the Issuer) may exercise the Assigned Rights and all other rights, powers, options, privileges and remedies provided to the Trustee under this Assignment, to the exclusion of Fannie Mae;

(b) all obligations of the Borrower under the Credit Facility Documents shall continue to be secured by the Security Instrument on an equal and ratable basis with the obligations of the Borrower under the Loan Documents; and

(c) if, at such time, Fannie Mae has a lien on any Bonds pursuant to the Pledge Agreement, the Trustee shall have, in its exercise of any of the rights, powers, options, privileges and remedies provided for in this Assignment pursuant to Section 5.1, the same fiduciary obligations to Fannie Mae, as secured party, as the Trustee has to the Bondholders.

Notwithstanding the foregoing, nothing in this Assignment or in any Loan Document shall limit or control the exercise by Fannie Mae of the rights granted by the Borrower to Fannie Mae as “Lender” under the Security Instrument. Each of the Issuer, the Trustee and the Borrower recognizes and confirms the rights granted by the Borrower to Fannie Mae as “Lender” under the Security Instrument. If and for so long as Fannie Mae continues to have any further obligation under the Credit Enhancement Instrument, Fannie Mae shall be entitled to receive all notices pursuant to this Assignment, the Indenture and the Loan Documents.

ARTICLE VI

TRUSTEE

SECTION 6.1 **Certain Notices to Fannie Mae and Loan Servicer**. The Trustee shall give the following notices in writing:

(a) The Trustee shall give prompt written notice to Fannie Mae and the Loan Servicer of the occurrence of any Event of Default known to it under the Indenture, the Credit Enhancement Instrument, the Financing Agreement, the Note, the Security Instrument or any other Transaction Document, and of any event which Trustee actually knows would become such an Event of Default upon the giving of notice, the lapse of time or both, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect to such events.

(b) During any Weekly Variable Rate Period, the Trustee shall give written notice to the Loan Servicer of the amount of each interest payment due on the Bonds. The Trustee shall give such notice as soon as practicable but not later than the last Wednesday before the Interest Payment Date of each month, or in the event such Wednesday is not a Business Day, the next Business Day.

SECTION 6.2 **Power of Attorney**. The Trustee, for itself and for any successor or replacement Trustee, irrevocably and unconditionally constitutes and appoints Fannie Mae as the Trustee’s true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any notice, document, certificate, paper, instrument or pleading and to do in the Trustee’s name, place and stead, all such acts, things and deeds for and on behalf of the Trustee under this Assignment and/or any of the Assigned Documents which the Trustee could or might do or which may be necessary, desirable or convenient in Fannie Mae’s sole discretion to effectuate the purposes of this Assignment and/or any Assigned Document. The power of attorney and the rights, remedies, power and authority granted by the Trustee to Fannie Mae in this Assignment are hereby declared by the Trustee to be coupled with an interest and

irrevocable until the Reimbursement Agreement is no longer in full force and effect or until the Assigned Rights are transferred to the Trustee pursuant to Section 5.1, and may be exercised by Fannie Mae in the name of Fannie Mae, in the name of the Trustee or in the names of Fannie Mae and the Trustee, as Fannie Mae may at any time or from time to time determine, and the Trustee hereby confirms and ratifies all acts and deeds taken or to be taken by Fannie Mae as attorney-in-fact.

SECTION 6.3 **Enforcement.** Notwithstanding any other provision in this Assignment to the contrary, so long as no transfer of the Assigned Rights pursuant to Section 5.1 has occurred, the Trustee shall not exercise any remedy or direct any proceeding under the Indenture, the Loan Documents or the Financing Agreement other than (i) to enforce rights under the Credit Enhancement Instrument, (ii) to enforce the tax covenants in the Indenture, the Tax Certificate and the Financing Agreement provided that the Trustee does not enforce any right it may have for monetary damages, and (iii) as otherwise permitted under the Indenture or the Financing Agreement. The Trustee shall provide written notice to Fannie Mae, the Issuer and the Loan Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Indenture or the Financing Agreement.

SECTION 6.4 **Bailee.** The Trustee agrees to act as bailee and agent on behalf of Fannie Mae in relation to the Borrower's pledge and grant of a security interest pursuant to Section 2.6 of the Reimbursement Agreement to the extent, if any, the Borrower retains an interest in all Funds, Accounts and Investments held by the Trustee under the Indenture.

SECTION 6.5 **Records and Books of Account.** The Trustee shall keep, or cause to be kept, proper records and books of account in which complete and accurate entries shall be made of all of its transactions relating to the Loan and the Assigned Documents, including without limitation, payments made under the Loan and all funds and accounts established by or held pursuant to the Indenture with respect to the Loan.

SECTION 6.6 **Examination of Records and Books of Account.** The Trustee agrees that all records and books of account in its possession relating to the Loan, the Assigned Documents and all records and books of account regarding the receipt and distribution of payments on the Loan and the Borrower's compliance with the terms and conditions of the Loan and the Assigned Documents, shall be open to inspection, examination and audit at any reasonable time by the Issuer, the Borrower, the Loan Servicer and Fannie Mae or by such accountants or other agents as the Issuer, the Borrower, the Loan Servicer or Fannie Mae may from time to time designate. In addition, the Issuer, the Borrower, the Loan Servicer and Fannie Mae shall have the right, at any time and from time to time, to require the Trustee to furnish such documents to the Issuer, the Borrower, the Loan Servicer and Fannie Mae, at the Borrower's expense, as the Issuer, the Borrower, the Loan Servicer or Fannie Mae, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Loan have been complied with.

ARTICLE VII

INSURANCE AND CONDEMNATION

SECTION 7.1 **Insurance.** So long as no transfer of the Assigned Rights pursuant to Section 5.1 has occurred, (i) Fannie Mae shall be named as the sole mortgagee on all fire, extended coverage and other hazard insurance policies required under the Loan Documents (“**Insurance Policies**”), (ii) all such proceeds shall be held and applied by Fannie Mae in accordance with the Security Instrument and the other Loan Documents, and (iii) the Borrower, as mortgagor, shall deal solely with Fannie Mae or the Loan Servicer, as Fannie Mae shall direct, under the Loan Documents with respect to all matters related to the Insurance Policies. If the Assigned Rights transfer to the Trustee pursuant to Section 5.1, (1) the Trustee shall be named as the sole mortgagee on all Insurance Policies, (2) all such proceeds shall be held and applied by the Trustee in accordance with the Security Instrument and the other Loan Documents, and (3) the Borrower, as mortgagor, shall deal solely with the Trustee under the Loan Documents with respect to all matters related to the Insurance Policies. The Borrower agrees that Fannie Mae, the Trustee and the Issuer shall each be a named insured on all liability insurance policies required under the Loan Documents. Fannie Mae and the Trustee shall execute, acknowledge and deliver all such documents as shall be necessary to evidence or confirm the provisions of this Section. Neither Fannie Mae, the Loan Servicer, the Issuer nor the Trustee shall have any liability under this Assignment or otherwise for any application of insurance proceeds.

SECTION 7.2 **Condemnation.** So long as no transfer of the Assigned Rights pursuant to Section 5.1 has occurred, (i) Fannie Mae shall be the sole payee with respect to all condemnation awards, (ii) all proceeds of any condemnation award shall be applied in any manner permitted by the Security Instrument, as directed by Fannie Mae, in its discretion, and (iii) the Borrower, as mortgagor, shall deal solely with Fannie Mae or the Loan Servicer, as Fannie Mae shall direct, under the Loan Documents. If the Assigned Rights transfer to the Trustee pursuant to Section 5.1, (1) the Trustee shall be the sole payee with respect to all condemnation awards, (2) all proceeds of any condemnation award shall be applied in any manner permitted by the Security Instrument, as directed by the Trustee, in its discretion, and (3) the Borrower, as mortgagor, shall deal solely with the Trustee under the Loan Documents. Fannie Mae and the Trustee shall execute, acknowledge and deliver all such documents as shall be necessary to evidence or confirm the provisions of this Section. Neither Fannie Mae, the Loan Servicer, the Issuer nor the Trustee shall have any liability under this Assignment or otherwise for any application of condemnation award proceeds.

ARTICLE VIII

REGULATORY AGREEMENT

SECTION 8.1 **Monitoring of Regulatory Agreement.** The Issuer shall have the sole obligation to monitor compliance with the Regulatory Agreement.

SECTION 8.2 **Termination of Regulatory Agreement.** Upon expiration or termination of the Regulatory Agreement pursuant to its terms, the Issuer, in its capacity as the Issuer, shall promptly notify Fannie Mae of the termination of the Regulatory Agreement.

SECTION 8.3 **Right To Enforce Compliance.** The Issuer, the Trustee, the Loan Servicer and Fannie Mae shall each have the right, but not the obligation, to enforce compliance by the Borrower and its successors as subsequent owners of the Mortgaged Property with the Regulatory Agreement. Notwithstanding the foregoing, the Trustee agrees that it will, subject to the provisions of the Indenture and Article IX, at the direction of the Issuer, take such action as may be required to achieve compliance by the Borrower with the Regulatory Agreement.

SECTION 8.4 **Notices of Violations of the Regulatory Agreement.** Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer shall send written notice of such violation to Fannie Mae, the Loan Servicer and the Trustee. The Issuer's notice shall set out the nature of the violation and state whether the violation has been cured or has not been cured but is curable within a reasonable period of time, or is incurable and contain a copy of the Issuer's notice of violation to the Borrower. If the Borrower fails to cure the violation to the reasonable satisfaction of the Issuer within the time period set forth in the Issuer's notice of the violation to the Borrower (which period shall not be shorter than any applicable period set out in the Regulatory Agreement for the cure of such violation) and if, as a consequence of such failure, the Issuer declares an Event of Default under the Regulatory Agreement, the Issuer shall provide prompt written notice to Fannie Mae, the Loan Servicer and the Trustee of the Event of Default (together with a copy of any notice of the Event of Default provided to the Borrower).

SECTION 8.5 **Cure Rights.** Each of Fannie Mae, the Loan Servicer and the Trustee shall have the right, but not the obligation, to cure any default by the Borrower under the Regulatory Agreement. Such cure may be made even after the Issuer's notice of declaration of an Event of Default under the Regulatory Agreement, provided however, such cure right shall not affect any requirements of the Code and the Act. Fannie Mae shall have the additional right, but not the obligation, to cure any violation of the Regulatory Agreement by assumption of the management and operation of the Mortgaged Property, directly or through any Fannie Mae approved seller-servicer or a receiver under the Security Instrument. Any operation of the Mortgaged Property by Fannie Mae or its successors or assigns shall be in accordance with the Regulatory Agreement, but only so long as the Regulatory Agreement remains in effect.

ARTICLE IX

ISSUER'S COVENANTS

SECTION 9.1 **Limitations on Issuer.** The Issuer shall not consent to any amendment, supplement to, or restatement of any Bond Document or the Regulatory Agreement, or any other document executed or delivered in connection with the Bonds without the prior written consent of Fannie Mae.

SECTION 9.2 **Enforcement.** Notwithstanding any other provision in this Assignment to the contrary, so long as no transfer of the Assigned Rights pursuant to Section 5.1 has occurred, neither the Issuer nor any person under its control shall exercise any remedy or direct any proceeding under the Indenture, the Financing Agreement or the Regulatory Agreement other than as set out in this Section.

(a) **Enforcement of Certain Rights and Obligations.** Subject to subsection (b), the Issuer may:

(1) Tax Covenants. Seek specific performance of the tax covenants of the Indenture, the Tax Certificate and the Financing Agreement, injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund;

(2) Regulatory Agreement. Seek specific performance of the obligations of the Borrower or any other owner of the Property under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise unlawful; provided, however, that the Issuer may enforce any right it may have under the Regulatory Agreement for monetary damages only against Excess Revenues, if any, of the Borrower, unless Fannie Mae otherwise specifically consents in writing to the use of other funds; and

(3) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the Reserved Rights; provided, however, that the Issuer or any person under its control may only enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrower, unless Fannie Mae otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(b) **Overriding Limitations.** In no event shall the Issuer:

(1) prosecute its action to a lien on the Mortgaged Property;

(2) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(3) interfere with the exercise by Fannie Mae of any of its rights under the Loan Documents or the Credit Facility Documents upon the occurrence of an event of default by the Borrower under the Loan Documents or the Credit Facility Documents; or

(4) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan or the Bonds.

(c) **Notice of Action.** The Issuer shall provide written notice to Fannie Mae, the Trustee and the Loan Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Indenture, the Financing Agreement or the Regulatory Agreement.

(d) **Definition of "Excess Revenues".** As used in this Section, the term "**Excess Revenues**" means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all

interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Loan or the Bonds, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Mortgaged Property (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

SECTION 9.3 **Specific Performance**. The Borrower acknowledges and agrees that were money damages a remedy under the Regulatory Agreement or in connection with any of the tax covenants of the Indenture, the Tax Certificate and the Financing Agreement, money damages alone would not be an adequate remedy at law for a default by the Borrower arising from a failure to comply with the Regulatory Agreement or the tax covenants and therefore the Borrower agrees that the remedy of specific performance shall be available to the Issuer and/or the Trustee in any case.

SECTION 9.4 **Control on Right of Redemption**. Notwithstanding any inconsistent provision of the Indenture or any of the Loan Documents and so long as no transfer of the Assigned Rights pursuant to Section 5.1 has occurred, the Issuer shall not exercise any right pursuant to Section 3.2 of the Indenture to redeem any or all of the Bonds without the prior written consent of Fannie Mae in each case and shall not, without the prior written consent of Fannie Mae, use the proceeds of any Advance under the Credit Enhancement Instrument to make any such redemption.

SECTION 9.5 **Consents to Maturity and Sinking Fund Schedules**. The Issuer will not establish any schedule of principal amounts of Bonds to mature or be subject to redemption through the application of Sinking Fund Payments as provided in Section 2.8(c)(5) of the Indenture without the prior written direction of the Borrower and, for so long as Fannie Mae has any obligation under the Credit Enhancement Instrument and no Wrongful Dishonor exists, without the prior written consent of Fannie Mae.

SECTION 9.6 **Remarketing Agreement; Tender Agent Agreement**. The Issuer and the Borrower agree that they will not enter into any amendment, modification, supplement or other document effecting a change in the Remarketing Agreement or Tender Agent Agreement applicable to the Bonds or enter into any new or replacement remarketing agreement or tender agent agreement with respect to the Bonds without the prior written consent of Fannie Mae.

SECTION 9.7 **Further Assurances**. The Issuer, to the extent permitted by law, shall execute, acknowledge and deliver such supplemental indentures and other instruments and documents, and perform such further acts, as the Trustee or the Credit Provider may reasonably require to perfect, and maintain perfected, the security interest in the Trust Estate or to better assure, transfer, convey, pledge, assign and confirm to the Trustee or the Credit Provider all of its respective interest in the property described in the Indenture and the revenues, receipts and other amounts pledged by the Indenture. The Issuer, at the sole expense of the Borrower, shall cooperate to the extent necessary with the Borrower, the Trustee and the Credit Provider in their

defenses of the Assigned Rights and the Credit Facility against the claims and demands of all Persons.

ARTICLE X **MISCELLANEOUS**

SECTION 10.1 **Exculpation**. Notwithstanding any other provision of this Assignment, any of the Assigned Documents or any of the Issuer Documents to the contrary, Fannie Mae shall not be liable under this Assignment, any of the Assigned Documents, or any of the Issuer Documents to any party hereto or thereto or any Bondholder for any action taken or omitted by Fannie Mae in good faith in connection with the Loan, the Assigned Documents, the Issuer Documents or this Assignment. Fannie Mae shall be protected and shall incur no liability in relying upon the accuracy, acting in reliance upon the contents, and assuming the genuineness, of any notice, demand, certificate, signature, instrument or other document believed by Fannie Mae to be genuine and to have been duly executed by the appropriate signatory. In addition, Fannie Mae shall be protected and shall incur no liability in relying upon an opinion of counsel with respect to any action taken or not taken in good faith by Fannie Mae under this Assignment or any of the Assigned Documents. Fannie Mae shall be free, at all times, to establish independently to its satisfaction and in its discretion the existence or non-existence, as the case may be, of any fact the existence or non-existence of which shall be a condition to any term or provision of this Assignment or of any of the Assigned Documents. Fannie Mae's immunities and exemptions from liability shall extend to its directors, officers, employees and agents.

SECTION 10.2 **Disclaimers; Acknowledgments**. Approval by Fannie Mae of the Borrower, the Loan, the Bonds or otherwise shall not constitute a warranty or representation by Fannie Mae as to any matter. Nothing set forth in this Assignment or in the subsequent conduct of the parties shall be deemed to constitute Fannie Mae as the partner of any person for any purpose whatsoever.

SECTION 10.3 **Liability of Borrower**. Notwithstanding anything to the contrary contained in this Assignment, the personal liability of the Borrower, any general partner of the Borrower (if the Borrower is a partnership), and any Key Principal (as defined in the Security Instrument) to pay amounts due in connection with the obligations of the Borrower under this Assignment shall be limited as and to the extent provided in the Note. The foregoing limitation shall not limit or impair any right to proceed against any collateral that may be pledged to the payment of the Borrower's obligations or that may otherwise be available under any Loan Document.

SECTION 10.4 **Notices**. All notices, certificates, demands and other communications provided for in this Assignment shall be in writing and mailed (registered or certified mail, return receipt requested, and postage prepaid), hand-delivered, with signed receipt, or sent by nationally-recognized overnight courier:

To the Issuer: County of San Bernardino

Attention: _____
Telephone: (____) _____
Facsimile: (____) _____

To the Trustee: BNY Western Trust Company
700 South Flower Street, Suite 500
Los Angeles, California 90017-4104

Attention: _____
Telephone: (____) _____
Facsimile: (____) _____

To the Borrower: WLP Parkview Place Apartments, LLC
c/o Lewis Operating Corp.
1156 North Mountain Avenue
P.O. Box 670
Upland, California 91785-0670
Attention: David L. Linden
Telephone: (909) 946-7535
Facsimile: (909) 949-6700

To Fannie Mae:

Fannie Mae
3900 Wisconsin Avenue, NW
Drawer AM
Washington, DC 20016-2899
Attention: Director, Multifamily Asset Management
Telephone: (301) 204-8008
Facsimile: (301) 280-2065
RE: \$5,220,000 County of San Bernardino, California Variable
Rate Demand Multifamily Housing Mortgage Revenue
Refunding Bonds, 2004 Series A (Parkview Place
Apartments); Capri Capital Finance, LLC

with a copy to:

Fannie Mae
3900 Wisconsin Avenue, NW
Drawer AM
Washington, DC 20016-2899
Attention: Vice President, Multifamily Operations
Telephone: (301) 204-8422
Facsimile: (202) 752-8369
RE: \$5,220,000 County of San Bernardino, California Variable
Rate Demand Multifamily Housing Mortgage Revenue

Refunding Bonds, 2004 Series A (Parkview Place
Apartments); Capri Capital Finance, LLC

To the Loan Servicer: Capri Capital Finance, LLC
1655 North Fort Myer Drive, 13th Floor
Arlington, Virginia 22209
Attention: Director of Loan Servicing
Telephone: (703) 243-5100
Facsimile: (703) 525-4323

Each party named above may designate a change of address by written notice to all of the other parties 15 days prior to the date of such change of address is to become effective. All such notices, certificates, demands and other communications shall be effective when received at the address specified as aforesaid.

SECTION 10.5 **Waivers.** By any act, delay, omission or otherwise, neither Fannie Mae nor the Loan Servicer shall be deemed to have waived any of Fannie Mae's rights or remedies under this Assignment. No waiver whatever shall be valid, unless in writing signed by Fannie Mae and then only to the extent set forth in the waiver. A waiver by Fannie Mae of any default, right or remedy under this Assignment on any one occasion shall not be construed as a waiver of any other default or be a bar to any right or remedy Fannie Mae would otherwise have on any future occasion.

SECTION 10.6 **Amendments.** No amendment to this Assignment shall be binding upon the parties to this Assignment until such amendment is reduced to writing and executed by Fannie Mae, the Issuer and the Trustee and acknowledged by the Borrower.

SECTION 10.7 **Severability.** Should one or more of the provisions of this Assignment be held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be severable from the remainder as to such jurisdiction and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired in any jurisdiction.

SECTION 10.8 **Execution in Counterparts.** This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 10.9 **Governing Law.** This Assignment shall be construed, and the obligations, rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the State without regard to conflicts of laws principles, except to the extent that the laws of the United States of America may prevail.

SECTION 10.10 **WAIVER OF JURY TRIAL.** THE PARTIES HERETO (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING UNDER THIS ASSIGNMENT TRIABLE BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL BY THE PARTIES, AND THIS WAIVER IS

INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE.

SECTION 10.11 **Termination.** This Assignment (a) shall terminate and be of no further force or effect as to Fannie Mae at such time as the Reimbursement Agreement is no longer in full force and effect and (b) shall terminate and be of no further force and effect as to the Trustee at the earlier of (i) such time as the Bonds have been paid in full or deemed paid in full as provided in Article IX of the Indenture or (ii) by mutual written agreement of the Issuer and the Trustee after this Assignment has so terminated as to Fannie Mae, in which event the Assigned Documents shall automatically revert to the Issuer without any further action on the part of the Trustee.

SECTION 10.12 **References.** Whenever any party is referred to in this Assignment, such reference shall be deemed to include the successors and assigns of such party. If an Alternate Credit Facility (as defined in the Indenture) is issued in accordance with the provisions of the Indenture, and if Fannie Mae shall have assigned to the issuer of the Alternate Credit Facility all of its rights under this Assignment, all references in this Assignment to the “Credit Enhancement Instrument” shall mean the Alternate Credit Facility and all references in this Assignment to “Fannie Mae” shall mean the person, firm or entity which has issued the Alternate Credit Facility.

SECTION 10.13 **Additional Agreement.** In the event that the Borrower is no longer the owner of the Mortgaged Property and a new mortgagor is substituted in its place, or if the Security Instrument is replaced by a new mortgage on the Mortgaged Property, the Issuer shall execute and deliver to Fannie Mae, and shall record, a new assignment, substantially the same as this Assignment, which shall refer to this Assignment.

SECTION 10.14 **No Merger of Interests.** There shall be no merger of the interests of any of the Bondholders and of the holder of the Assigned Rights by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, such interests, unless and until such person, firm or entity and all others having an interest therein shall effect such merger in a written, duly recorded instrument.

The remainder of this page is intentionally blank.

The parties have duly executed this Assignment as of the day and year first above written.

J. RENEE BASTIAN

COUNTY OF SAN BERNARDINO

Attest:

By: _____
Thomas R. Laurin, Director
Department of Economic and Community Development

Clerk of the Board

APPROVED AS TO FORM BY
RONALD D. REITZ, COUNTY COUNSEL

By: _____
Michelle D. Blakemore, Deputy

BNY WESTERN TRUST COMPANY,
a California banking corporation, as trustee

By: _____
Name: _____
Title: Authorized Officer

FANNIE MAE

By: _____

Name: _____

Title: _____

ACKNOWLEDGED, ACCEPTED, AND AGREED:

WLP PARKVIEW PLACE APARTMENTS, LLC,
a Delaware limited liability company

By: Lewis Operating Corp.,
a California corporation,
Sole Manager

By: _____
Name: _____
Authorized Agent

[ASSIGNOR'S ACKNOWLEDGMENT]

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20____, before me, _____,
a Notary Public in and for said State, personally appeared _____
_____.

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

[TRUSTEE'S ACKNOWLEDGMENT]

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20____, before me, _____,
a Notary Public in and for said State, personally appeared _____
_____.

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

[FANNIE MAE'S ACKNOWLEDGMENT]

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20____, before me, _____,
a Notary Public in and for said State, personally appeared _____
_____.

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

[BORROWER'S ACKNOWLEDGMENT]

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20____, before me, _____,
a Notary Public in and for said State, personally appeared _____
_____.

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
Legal Description

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

(Space Above for Recorder's Use Only)

ASSIGNMENT AND INTERCREDITOR AGREEMENT

by and among

COUNTY OF SAN BERNARDINO,

BNY WESTERN TRUST COMPANY, as Trustee

and

FANNIE MAE,

and

acknowledged, accepted and agreed to by

WLP PARKVIEW PLACE APARTMENTS, LLC

Relating to

\$5,220,000

County of San Bernardino, California Variable Rate Demand Multifamily Housing Mortgage
Revenue Refunding Bonds, 2004 Series A (Parkview Place Apartments)

Dated as of May 1, 2004

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